

REMARKS

Claims 1, 3-5, 9-11 and 13-29 are in this application and are presented for consideration.

Claims 1, 3, 5 and 10 have been amended, and new claims 14-29 have been added.

The claims have been amended to address the Examiner's rejections and to place the application in better form.

Claims 1 through 13 have been rejected as being indefinite with regard to the phrase "generating one of an overpressure and a vacuum". This phrase has the same meaning as "generating either an overpressure or a vacuum". Applicant notes that the phrase "one of" is traditional claim language for setting forth one feature from a group of features. A claim including this type of language is often known as a Markush claim. Therefore it is applicant's position that this phrase does not cause the claims to be indefinite.

The rejection also questions how a vacuum of a device releases fluid from the sampling tip. Applicant notes that overpressure and vacuum are relative terms depending upon a point of reference. A vacuum generated on one side of a wall will give an appearance as an overpressure on the other side of a wall. Correspondingly, an overpressure generated on one side of the wall will give the appearance that there is a vacuum on the other side of the wall. A vacuum releases sample fluid by sucking the fluid out of the tip. Correspondingly an overpressure releases fluid by pushing the fluid out of the tip. Whether the fluid is sucked out or pushed out depends on one's point of reference.

Independent claims 1 2, 10, 11 and 13 have been rejected as being anticipated by Avakian '032.

Claim 1 sets forth a sampling tip for taking up the sample liquid in the sampling tip. Applicant has reviewed Avakian '032, and finds no teaching no suggestion of a sampling tip for taking up a sample in a sampling tip. The rejection equates element 24 of Avakian '032 with the sampling tip of claim 1. However applicant finds no indication that element 24 performs the taking up of a sample. In the present invention, the material (absorbent) and the shape (porous) of the porous sampling tip causes the sample liquid to be absorbed and stored in the sampling tip. In Avakian '032, applicant finds no indication that element 24 is formed of such a material. Instead in Avakian '032, there appears to be another device which actually causes the taking up. This appears to be described in column 2 lines 15 through 19, and appears to be a plunger. Element 24 of Avakian '032 appears to be only a filter, without performing any function of taking up. Therefore element 24 of Avakian '032 fails to anticipate all of the features of the sampling tip of claim 1.

Applicant also notes that element 20 of Avakian '032 does not appear to have all of the features of the sampling tip of claim 1. Since all the features of claim 1 are not present in Avakian '032, claim 1 defines over Avakian '032.

Claim 10 has been amended to also set forth the above features of the sampling tip. As described above, these features are not present in Avakian '032, and therefore claim 1 defines over Avakian '032.

Claims 1-3, 9-11 and 13 have been rejected as being anticipated by Kremer '488. Claim 1 has been amended to include the features of claim 2. Amended claim 1 now sets forth that the pneumatic device and the sample collector are arranged to generate an overpressure in the cavity of the sampling tip when the pneumatic device and the sample collector are

pushed together. Applicant has reviewed Kremer '488 and finds no teaching nor suggestion of such an arrangement of a sample collector and a pneumatic device. The rejection states that the pushing together of the pneumatic device and a sample collector is described in column 7 lines 50 - 52 of Kremer '488. Applicant has reviewed this portion of Kremer '488 and finds this portion to describe a vacuum assisted flow arrangement which is used to draw fluid. Applicant finds no teaching nor suggestion of a pushing together of a pneumatic device and a sample collector. Instead it appears that the tube 11 in Kremer '488 is held stationary during the extraction of fluid. Since there is no arrangement in Kremer '488 of a pneumatic device and a sample collector generating overpressure during a pushing together of each other, amended claim 1 cannot be anticipated by Kremer '488, and claim 1 defines over Kremer '488.

Claim 10 has also been amended to set forth that the sampling tip includes an indicator zone with a moisture indicator. The moisture indicator indicates that a predetermined volume of the sample liquid has been collected. This feature is similar to the feature set forth in original claim 4. Claim 4 has been rejected as being obvious over Kremer '488.

Applicant has reviewed Kremer '488, and finds no teaching nor suggestion of a moisture indicator which indicates that a predetermined volume of the sample liquid has been collected. The rejection refers to elements 44 and 50, as well as column 9 lines 47 – 53, and column 8 lines 51 – 54, to disclose the moisture indicator. Applicant has reviewed these portions of Kremer '488 and notes that the structure described in these portions undergoes a change in appearance when it comes into contact with a specific substance to be detected in a bodily fluid sample. Therefore this structure in Kremer '488 does not detect the presence, or a specific volume, of the bodily fluid sample, but only if a specific substance is present in

the sample. If the substance to be detected is not present in the sample, the structure of Kremer '488 will not give an indication. Therefore the sample in the proper volume would be present, but there would be no indication in Kremer '488. Therefore the indicator of Kremer '488 is not similar to the indicator of amended claim 10.

Claims 4, 5 15 and 25 also set forth the feature of a moisture indicator. As described above, applicant finds no teaching nor suggestion in Kremer '488 of an indicator that detects moisture. It appears that Kremer '488 describes structure for detecting substances in moisture, but not for detecting the moisture itself. Applicant has found that a moisture detector by itself is very useful. Applicant has found that it is not often easy to determine if a proper amount of sample liquid has been collected. The indicator of the present invention provides such a determination, but the indicators of Kremer '488 do not. The moisture indicator of the present invention is therefore an improvement over the prior art, and applicant respectfully request patent protection for this improvement.

New independent claim 18 has been added to sets forth that the pneumatic device is arranged at the second axial end of the sample collector. Kremer '488 appears to be silent as to where any pneumatic device is located. However it appears that Kremer '488 describes a vacuum or suction device. It is applicant's position that a vacuum or suction device would not operate properly if it was connected to a second axial end. Therefore the vacuum or suction device Kremer '488 can anticipate the pneumatic device of claim 21. Claim 21 therefore defines over Kremer '488.

Claim 18 also sets forth that the material of the sampling tip collects the liquid sample by capillary action. Applicant has reviewed Avakian '032, and finds no teaching nor

suggestion of a sampling tip which collects liquid by capillary action. Claim 21 therefore further defines over Avakian '032.

New claim 19 has been added to set forth a filter mixer. One side of the filter mixer is substantially complementary to an outer surface of the outer portion of the sampling tip. In the embodiment of figures 1, the outer portion of the sampling tip is that portion of element 4 which extends below element 7. The outer surface of this portion is the bottom surface in figures 1. The filter mixer is shown in figure 2, and the filter reactor is shown by reference 21. The complementary surface of element 21 is the upper surface in figure 2.

Claim 7 originally set forth a similar feature. In the rejection of claim 7, element 54 of Kremer '488 is equated with the filter mixer. Applicant has reviewed element of 54 of Kremer '488 and notes that element 54 does not have a surface which is complementary to an outer surface of an outer portion of a sampling tip. It also appears that element 54 of Kremer '488 is not in contact with an outer surface of an outer portion of the sampling tip, and has no need for a complementary surface. Therefore element 54 clearly does not have all the features of the filter reactor of new claim 19, and it would not be obvious to modify Kremer '488. Claim 19 therefore defines over Kremer '488 and cannot be anticipated/obvious by Kremer '488.

New claim 20 sets forth that the second axial end is inserted into a chamber of the pneumatic device to generate the overpressure. An embodiment of this is shown in figures 3 and 5. Applicant finds no teaching nor suggestion of this type of pneumatic device in the prior art, and therefore claim 20 further defines over the prior art.

New claim 21 sets forth a reagent in the chamber and a puncturing device arranged at

the second axial end of the sample collector. The reagent is shown in the embodiment of the drawings by reference 25, and the puncturing device by reference 9. Applicant finds no teaching nor suggestion of this structure in the prior art, and therefore claim 21 further defines over the prior art.

New claims 23 and 24 set forth features of the pneumatic device as shown in figures 4 and 6. Applicant finds no teaching nor suggestion of this structure in the prior art, and therefore these claims for the defined over the prior art.

Claim 9 has been amended to set forth that the sampling tip and the beaker shaped reagent container fully enclose a volume when said sampling tip is inserted into the reagent container. The specification in paragraph 42 indicates that reagent liquid in the reagent container 47 is pressed into the pores of the sample collector by applying pressure to the sample collector. The paragraph previously sets forth that the sample collector is introduced into the reagent liquid in the reagent container. In the embodiment of the drawings, especially figures 7a and 7b, one can see that sealing lip 52 would close off the chamber 47 in the reagent container. The specification in paragraph 41 also states that the sealing lip 52 closes off a volume... so that an overpressure can be generated in the pores of the sampling tip 2. Therefore it is inherent that the sampling tip and the reagent and chamber fully enclose a volume when the sampling tip is inserted into the chamber of the reagent container.

Claim 9 has been rejected as being anticipated by Kremer '488. Element 42 of Kremer '488 is equated with the reagent container of claim 9. Applicant has reviewed Kremer '488, and finds no teaching nor suggestion of element 42 fully enclosing a volume with a sampling tip. From the drawings of Kremer '488, it appears that element 42 should be separate from any

sampling tip, and there is no indication from the proportions of element 42, that element 42 is to fully enclose a volume with a sampling tip.

New claim 26 depends from system claim 10. Claim 26 sets forth that a sealing lip is arranged at the first axial end of the sample collector, and that the sealing lip and the chamber of the reagent container fully enclose a volume when the sampling tip is inserted into the chamber. Applicant finds no teaching nor suggestion of a sealing lip in Kremer '488 having all the features of the sealing lip of claim 26. Claim 26 therefore further defines over the prior art.

Claim 27 sets forth that the reagent container has a size and shape to press reagent liquid in the chamber into the pores of the sample collector when the sample collector is inserted into the chamber. Applicant finds no teaching nor suggestion of this feature in Kremer '488, and therefore claim 27 further defines over the prior art.

Claim 28 sets forth an overflow channel in the reagent container, and that the size and shape of the reagent container presses the reagent liquid into the cavity of the sample collector. Applicant finds no teaching nor suggestion of these features in Kremer '488, and therefore claim 28 further defines of Kremer '488.

New claim 29 depends from process claim 10 and sets forth process steps regarding how the sealing lip and the chamber fully enclose a volume, and the step of inserting the sample collector into the chamber to press reagent liquid in the chamber into pores of the sample collector. Applicant finds no teaching nor suggestion of these features in the prior art, and therefore claim 29 further defines over the prior art

Applicant acknowledges the provisional obviousness type double patenting rejection.

Because this rejection is "provisional" applicant will defer responding to this rejection until actual conflicting claims have been indicated to be allowable.

If the Examiner has any comments or suggestions which would further favorable prosecution of this application, the Examiner is invited to contact Applicant's representative by telephone to discuss possible changes.

At this time Applicant respectfully requests reconsideration of this application, and based on the above amendments and remarks, respectfully solicits allowance of this application.

Respectfully submitted
for Applicant,



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